

**HUDSON RIVER-BLACK RIVER REGULATING DISTRICT  
BOARD MEETING  
Lowville Town Offices  
5533 Bostwick Street  
Lowville, New York 13360  
November 9, 2016  
10:00AM**

**CALL TO ORDER**

Chairman Mark M. Finkle called the meeting to order at 10:00 A.M.

**PLEDGE OF ALLEGIANCE**

**ROLL CALL**

**Present:** Board Chairman Mark M. Finkle; First Vice-Chair Albert J. Hayes; Second Vice-Chair David W. Berkstresser, and Board Members Anthony M. Neddo, and Jeffrey Rosenthal; Executive Director Robert J. Smullen; General Counsel Robert P. Leslie; Chief Fiscal Officer Richard J. Ferrara; Chief Engineer Robert Foltan; Administrator John Hodgson; and Compliance Officer Stephanie Ruzycky.

**MOTION TO ADOPT OR REVISE THE MEETING AGENDA**

Chairman Finkle asked for a motion to adopt the meeting agenda. Mr. Berkstresser made a motion to adopt the agenda. Mr. Neddo seconded. The Board unanimously approved the motion.

**INTRODUCTION OF GUESTS**

Chairman Finkle recognized the Herkimer, Jefferson, and Lewis County Officials in attendance.

**PUBLIC COMMENT**

Chairman Finkle noted that the Board would open the Black River Area Apportionment Grievance Hearing shortly and that at that time, any person aggrieved by the Apportionment will have an opportunity to speak. He solicited comments on other matters of interest from the public. Hearing none.

**BLACK RIVER AREA APPORTIONMENT GRIEVANCE HEARING**

The Board conducted an Apportionment Grievance Hearing at which the affected Counties and others interested in or aggrieved by the Black River Area Apportionment could seek a modification to the Apportionment. Prior to the Board meeting, the Board received and

reviewed complaints from Herkimer, Jefferson and Lewis counties and information advanced by staff.

The following aggrieved parties presented oral testimony to the Board:

David Paulsen, attorney for Jefferson County, challenged the Board to identify the benefits realized by each entity assessed and to establish the direct nexus between such benefits and the proportion of cost attributable to each of the public corporations named in the apportionment. He suggested that the Board further identify the areas in Jefferson County subject to flooding and then drill down to apportion costs against that affected municipality rather than the county. Mr. Paulsen pointed out that Jefferson County itself does not own infrastructure subject to flooding. Finally, Mr. Paulsen challenged the Board's authority to apportion. He suggested that ECL 15-2121(7) requires either a legislative enactment establishing new powers for the Board or a demonstration by the Board of the change in circumstances which now make it equitable to apportion its costs to Jefferson County where it has not done so before.

Chairman Finkle asked staff to address Jefferson County's concerns. Mr. Leslie noted that the identification of benefits, methodology, and selection of beneficiaries prepared for the Black River Area Apportionment mirrors that employed in the Hudson River Area. He explained that while the Five Counties named in the Hudson River Area Apportionment had litigated the matter through to the NYS Court of Appeals, the definitive statement of the Courts pertaining to the acceptance of the Board's interpretation of its statute, the identification of beneficiaries, the definition of benefits and the methodology for apportioning those benefits among the beneficiaries, arose in the Third Department, he did not expect a different result in the courts of the Fourth Department. Mr. Leslie noted that the basis for selecting the Counties rather than some of other state or local municipality or subdivision was well articulated in the documentation supporting the Black River Area Apportionment and that in addition the documentation supporting the Hudson River Area Apportionment was still available to the Board on the District's website and that it continues to form the basis for the Board's decision here. Mr. Leslie pointed out that while Jefferson County may not purport to own property subject to flooding, the distinction the Board makes between parcels of real estate subject to the apportionment and the public corporations named in that apportionment render that factoid less relevant. Finally, Mr. Leslie noted that the Board interprets its enabling statute to authorize a new apportionment in the event that new hydropower projects are developed in a manner that utilizes the benefits provided by the Regulating District's facilities; for instance flood protection and/or flow augmentation. Further, the statute provides that in an instance where an existing apportionment no longer serves, such as where a hydroelectric facility or mill no longer reaps the benefits of Regulating District's efforts, a new apportionment shall be developed to take its place. It is in this context that the Board has exercised its discretion to conduct the instant apportionment; bolstered by an Office of the State Comptroller audit report suggesting such action and the settlement of a lawsuit in which the Board agreed to take such action.

Robert Malone, attorney for Herkimer County, noted that the instant apportionment creates a charge that is new to all of the involved counties. He noted the tremendous fiscal pressure brought to bear on Herkimer County and each of the other named county beneficiaries.

On behalf of Herkimer County, he asserted that the Board has offered no compelling reason to expand the existing assessment against the hydroelectric facilities benefitted to include an apportionment against both those facilities and the Counties. He and Herkimer County's treasurer asked the Board to reconsider the impact the Board's assessment will have on the County's budget.

Staff drew a parallel between the identification of beneficiaries in the two area apportionments and noted the statutory language compelling the Board to apportion an amount, less an amount chargeable to the state, among the public corporations and parcels of real estate benefitted. As such, simply eliminating the counties from the apportionment leaving only the hydroelectric facilities would be contrary to statute.

Joan McNichol advanced an equitable argument for Lewis County. County Attorney McNichol explained that Lewis County has conducted and maintained several flood control projects along the affected rivers and that, equitably, those costs should factor into the assessment levied against the county. She also articulated a point raised throughout the hearing that the two Board vacancies should be filled with representatives from the Black River Area Counties. County Chairman Michael Tabolt and County Legislator Phil Hathaway both spoke to the effect the new unanticipated assessment would have on Lewis County's budget.

Chairman Finkle separated out the Regulating District's costs to operate its facilities from actions taken downstream and then offered to consider in future budgets whether activities undertaken by Lewis, or the other Counties, fall within the Regulating District's mission. Executive Director Smullen explained that the apportionment of Board Members is a function carried out by the Governor and that, while the Board has asked for new appointments, the appointment of new members is beyond the Board's control.

Mr. Leslie noted that should the Board confirm the Apportionment without further modification, further New York State Department of Environmental Conservation (DEC) approval is not required and the Apportionment will be final.

Further discussion among the Board and the aggrieved parties ensued.

Chairman Finkle tabled the discussion to the December meeting. He noted that the Board would hold its next meeting, December 13, back in Lowville if possible.

#### **PUBLIC COMMENT – Revisited**

Chairman Finkle recognized Ed Herbert, CSEA Union Representative for Local 1000. Mr. Herbert expressed concern that the Board has not yet acted upon a negotiated collective bargaining agreement. Chairman Finkle agreed to take up the matter at the Board's December meeting.

## **APPROVAL OF THE SEPTEMBER 13, 2016 REGULAR MEETING MINUTES**

Chairman Finkle asked for a motion to adopt the September 13, 2016 regular meeting minutes. Mr. Rosenthal advanced the motion to approve the regular meeting minutes. Mr. Berkstresser seconded and the motion was approved by unanimous vote.

## **REPORT OF THE EXECUTIVE DIRECTOR**

Mr. Smullen presented his report. He reported that staff conducted a meeting with the Lewis County Board of Legislators to present an overview of the Black River Area Apportionment; including its assessments against public corporations. Mr. Smullen noted the Regulating District's conduct of the Stillwater Emergency Action Plan Functional Exercise on September 22<sup>nd</sup>; a widely attended event including emergency responders within the Black River Area's area of operations. He noted a meeting with the Executive Director of the Lake George Park Commission to examine areas of cooperation between the agencies. Mr. Smullen reported on Resolution Conferences held with Kevin and Catherine King regarding an encroachment issue in Broadalbin and with Lucy Trefilietti-Cody regarding a failure to renew an access permit in Edinburg. Mr. Smullen reported that over the last two months he reviewed all commercial permits around the Great Sacandaga Lake to become familiar with the commerce they conduct in support of recreation. He noted that discussions with the Saratoga County and Fulton County Historians continue on Regulating District archival support for a documentary on the Sacandaga Reservoir. Mr. Smullen reported that he, Counsel and the Chief Engineer participated in a technical assistance meeting with the New York State Power Authority in White Plains to analyze the lease for the hydroelectric facility co-located at Stillwater Reservoir. Mr. Smullen noted that he and the Board Chair held meetings with the Adirondack Park Agency and DEC Region 5 in Ray Brook on common issues of concern.

## **CONTRACTS**

### **RESOLUTION TO APPROVE NETWORK MANAGED SERVICES AGREEMENT WITH TAG SOLUTIONS, LLC**

Mr. Ferrara presented the Board with a resolution to transform the agreement through which TAG Solutions, LLC provides network services to the Regulating District. He noted that the District maintains a virtual private network (vpn) computing environment across its three main offices, Albany, Mayfield, and Watertown, and that TAG Solutions, LLC has provided support to that network since 2006. He explained that the network and its demands will be better served through a Managed Services Agreement with Tag Solutions, LLC because of the State's cyber security constraints. Mr. Ferrara recommended that the Board approve a Managed Services Agreement with Tag Solutions, LLC, a NYS Small Business concern, for three (3) years beginning December 1, 2016 in the amount of \$45,936.00. Mr. Ferrara noted that he considers the agreement to be a discretionary procurement that does not require further approval.

Mr. Rosenthal made a motion to adopt the Resolution to approve a Managed Services Agreement with Tag Solutions LLC for a three (3) year term commencing December 1, 2016 in

the amount of \$45,936.00. Mr. Hayes seconded and the Board adopted the Resolution by unanimous vote.

### **RESOLUTION TO APPROVE WEBCASTING SERVICES AGREEMENT WITH GRANICUS, INC.**

Mr. Ferrara presented the Board with a resolution to extend the term of the webcasting services agreement with Granicus Inc. Mr. Ferrara noted that, pursuant to Resolution 11-17-06, staff entered into a webcasting services agreement with Granicus, Inc. dated June 16, 2011 and that the agreement expired on December 16, 2015. Mr. Ferrara recommended that the Board continue to receive webcasting services from Granicus, Inc. at the current monthly fee of \$1,072.50 through June 16, 2019 pursuant to a new agreement between the two parties. He noted that the new agreement would result in a contract obligation to the Regulating District of \$45,045.00. Mr. Ferrara noted that he considers the agreement to be a discretionary procurement that does not require further approval.

Mr. Berkstresser made a motion to adopt the Resolution to approve a webcasting agreement with Granicus, Inc. for a term ending on June 16, 2019 and for an amount of \$45,045.00. Mr. Hayes seconded and the Board adopted the Resolution by unanimous vote.

### **STAFF REPORTS**

Mr. Leslie presented his report to the Board. He noted participation at Governor's Counsel's meeting of Agency General Counsel. Topics included implementation of laws passed during the recent legislative session, responsibilities of General Counsel, the role of the Inspector General and compliance with ongoing obligations such as Project Sunlight. Mr. Leslie noted that Erie, FERC and the Regulating District have finalized their Briefs before the U.S.C.A. DC Cir. ensuring that those briefs cite to the required Joint Appendix and that the Court has yet to schedule Oral Argument. Negotiations with DEC over the use of a fishing access point for staging and the embankment for the Hawkinsville Dam Remediation continue. Mr. Leslie noted that October was Domestic Violence Awareness Month.

Ms. Ruzycky presented her report to the Board. She noted that the second quarter utilization report due October 15<sup>th</sup> shows MWBE spend at \$14,421.10. She noted that total expenditures for the period was \$52,963.24 resulting in 27.2% for the second quarter. Current year to date MWBE expenditures of 30.9% exceed the annual 30% goal.

Mr. Ferrara presented his report to the Board. He noted that at the close of fiscal October 31, 2016, the general fund balances for the HRA and BRA were approximately \$2,180,091 and \$1,038,260 respectively. He noted that District's transactional processing and reporting are current. District bank reconciliations are complete through September 30, 2016. Mr. Ferrara noted that the independent audit has been delayed. He noted that the Access Permit Database conversion is 95% complete and that the next critical step is the generation of permit renewals.

Mr. Foltan presented the Chief Engineer's report to the Board. Mr. Foltan noted that the September average daily release from the Sacandaga Reservoir (Great Sacandaga Lake) was approximately 1,510 cubic feet per second (cfs). Precipitation during the month of September was below normal across the Great Sacandaga Lake watershed and the Indian Lake watershed. The monthly inflow to Great Sacandaga Lake and Indian Lake reservoir was approximately 17% and 36% of historic average, respectively. Monthly release of water from Great Sacandaga Lake and Indian Lake measured 83% and 87% of historic average, respectively. Mr. Foltan noted that the October average daily release from the Sacandaga Reservoir (Great Sacandaga Lake) was approximately 1,370 cubic feet per second (cfs). Precipitation during the month of October was below normal across the Great Sacandaga Lake watershed and the Indian Lake watershed. The monthly inflow to Great Sacandaga Lake and Indian Lake reservoir was approximately 21% and 30% of historic average, respectively. Monthly release of water from Great Sacandaga Lake and Indian Lake measured 71% and 56% of historic average, respectively.

The September average daily release from Stillwater Reservoir was approximately 345 cfs. Monthly total precipitation measured 45%, 53%, 43% of historic average at Stillwater, Old Forge, and Sixth Lake, respectively, as of September 26<sup>th</sup>. Precipitation in the month of September was below average at Stillwater, Old Forge and at Sixth Lake. The monthly inflow to Stillwater Reservoir was approximately 28% of historic average. The inflow to Sixth Lake and Old Forge Reservoir totaled 0.01 and 0.03 billion cubic feet, respectively, in September. Release of water from Stillwater Reservoir averaged 82% of historic discharge. The October average daily release from Stillwater Reservoir was approximately 261 cfs. Monthly total precipitation measured 125%, 100%, 93% of historic average at Stillwater, Old Forge, and Sixth Lake, respectively, as of October 23<sup>rd</sup>. Precipitation in the month of October was above average at Stillwater, Old Forge and below average at Sixth Lake. The monthly inflow to Stillwater Reservoir was approximately 57% of historic average. The inflow to Sixth Lake and Old Forge Reservoir totaled 0.05 and 0.14 billion cubic feet, respectively, in October. Release of water from Stillwater Reservoir averaged 79% of historic discharge

Mr. Hodgson presented his report to the Board. He reported on the Stillwater Emergency Action Plan Exercise held at Croghan and updated the Board on the remediation plans required of Oakey and Gizzy by DEC regarding the land disturbance in Mayfield. Mr. Hodgson noted staff's efforts to conduct an end of season clean-up at Sand Island and staff's participation in several training programs. He noted that the Mayfield office is gearing up for access permit renewals and provided an update on staff's construction of the new garage at Stillwater.

## **BOARD MEMBER QUESTIONS AND CONCERNS**

Mr. Berkstresser noted that, in his capacity as a councilman on the Town of Webb Board, he and town officials inspected the boardwalk lining the reservoir at Old Forge. Noting that the property is under the Regulating District's jurisdiction, he asked if the Regulating District could take a look and if it would consider shouldering the cost of the rehabilitation needed. Mr. Smullen indicated that he would consider the request.

**RESOLUTION SCHEDULING DATE, TIME AND LOCATION OF THE REGULAR MEETING FOR DECEMBER 13, 2016 BOARD MEETING**

Chairman Finkle asked for a motion to adopt a Resolution setting the next meeting of the Board of the Hudson River-Black River Regulating District for Tuesday, December 13, 2016. While noting the location of the next meeting is currently set for the Warren County Municipal Center, 1340 State Route 9, Room 5227, Lake George, NY 12845, Chairmen Finkle asked staff to explore moving the meeting to Lowville to accommodate further discussion with respect to the Black River Area Apportionment. The meeting will convene at 10:00 A.M. regardless of location. Chairman Finkle asked for a motion to set the meeting as indicated.

Mr. Neddo moved to adopt the Resolution setting the date, time and place of the next meeting with the proviso that if possible the Meeting be moved to Lowville. Mr. Berkstresser seconded and the Board adopted the Resolution by unanimous vote.

**Note: Staff have reserved meeting space at the Lowville Town Offices, 5533 Bostwick Street, Lowville, NY. December 13<sup>th</sup>. The meeting will commence at 10:00 A.M.**

**ADJOURNMENT**

Chairman Finkle called for a motion to adjourn the meeting. Mr. Rosenthal advanced the motion. Mr. Berkstresser seconded. The meeting adjourned at 12:05 A.M.

**RESOLUTIONS**

**16-35-11 RESOLUTION TO APPROVE NETWORK MANAGED SERVICES AGREEMENT WITH TAG SOLUTIONS, LLC**

Mr. Rosenthal made a motion to adopt the Resolution to approve a Managed Services Agreement with Tag Solutions LLC for a three (3) year term commencing December 1, 2016 in the amount of \$45,936.00. Mr. Hayes seconded and the Board adopted the Resolution by unanimous vote.

**16-36-11 RESOLUTION TO APPROVE WEBCASTING SERVICES AGREEMENT WITH GRANICUS, INC.**

Mr. Berkstresser made a motion to adopt the Resolution to approve a webcasting agreement with Granicus, Inc. for a term ending on June 16, 2019 and for an amount of \$45,045.00. Mr. Hayes seconded and the Board adopted the Resolution by unanimous vote.

**16-37-11 RESOLUTION SCHEDULING DATE, TIME AND LOCATION OF THE REGULAR MEETING FOR DECEMBER 13, 2016 BOARD MEETING**

Mr. Neddo moved to adopt the Resolution setting the date, time and place of the next meeting. Mr. Berkstresser seconded and the Board adopted the Resolution by unanimous vote.

Respectfully submitted,

Richard J. Ferrara,  
Secretary/Treasurer

Mark M. Finkle  
Board Chairman